IN THE HIGH COURT OF JUDICATURE AT JABALPUR.

Writ Petition NO. 1156 /98.

Petition under Arts.226/227 of the Constitution of India.

PETITIONER: R.K.Pandey son of Shri Ramkumar Pandey,
Resident of Patni Building,
Ganesh Ram Nagar,Raipur,distt: Raipur,MP.

Versus

RESPONDENTS: 1. Mandi Director/Commissioner, Mandi,
Kisan Bhawan,Plot NO.26,Arera Hills,
Jail Road,Bhopal,MP.

2. Addl.Director, Mandi,
Kisan Bhawan,Plot NO.26,Arera Hills,Bhopal.

3. Deputy Director/Dy.Secretary,
Mandi Board, Divisional Office,Raipur,MP.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 1156 of 1998

Petitioner : R.K. Pandey

Versus

Respondents : Mandi Director/ Commissioner, Mandi Kisan Bhawan and others

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Miss Sharmila Shinghai, counsel for the petitioner.

None or the respondents.

ORAL ORDER

(24th July, 2006)

1. This matter was initially filed in the High Court of Judicature at Jabalpur on 9.3.1998. Notice was issued on 17.3.1998 and the respondents filed their reply on 26.6.1998.
2. This matter is received on transfer from High Court of Madhya Pradesh. After transfer, S.P.C. was issued to the respondents. Pursuant to the S.P.C., none appear for the respondents.
3. Learned counsel appearing for the petitioner submits that the petitioner was initially appointed on the post of Assistant Secretary and thereafter, he was promoted to the post of Secretary, 'B' Grade in the year 1996.
4. The petitioner was granted two advance increments by order dated 13.12.1991 (Annexure P/3) on the ground that the petitioner's wife had undergone family planning operation

after two children. Subsequently, by order dated 10.6.1997 (Annexure P/1) after a period of about 5 years and 6 months, the order dated 13.12.1991 was cancelled and it was directed to recover the amount of two advance increments, paid to the petitioner by order dated 13.12.1991. Learned counsel further submits that the petitioner was not given any notice nor was afforded any opportunity of hearing before passing the impugned order withdrawing two advance increments and directing recovery of the amount against two advance increments, granted and paid earlier.

5. The respondents in its return submit that two advance increments were granted to the petitioner under mistaken belief. The petitioner was not entitled to any increments as per the circular dated 29.1.1979.

6. Be that as it may, once the petitioner has earned some monetary benefits by order passed by the respondents and the benefits so granted was not on the basis of any misrepresentation of the fact by the petitioner, withdrawal of two advance increments and recovery of the amount paid earlier is punitive in nature as it visits with civil consequences.

7. In the case of **Bhagwan Shukla, S/o Sarabjit Shukla Vs. Union of India and others** {1994 (6) Supreme Court Cases 154}, wherein the basic pay of the employee was reduced to Rs. 181/- from Rs. 190/- per month retrospectively w.e.f. 18.12.1970; the Supreme Court held as under :-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter."

8. The petitioner cannot be punished without following principles of natural justice and principles of fair play in action. It is a clear case where the principles of natural justice has not been followed before passing the impugned order whereby two advance increments granted earlier was withdrawn and recovery of the amount paid earlier was directed.

9. For the reasons stated-above, the writ petition is allowed and the impugned order dated 10.6.1997 (Annexure P/1) is quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu